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15 ATTORNEYS FOR THE UNITED STATES

16 **IN THE UNITED STATES DISTRICT COURT**
17 **DISTRICT OF NEVADA**

18
19 UNITED STATES OF AMERICA,

20 Plaintiff,

No. 2:12-cv-804-LDG-GWF

21
22 v.

23 CLIVEN BUNDY,

DECLARATION BY
GARY WARSHEFSKI

24 Defendant.

25 **DECLARATION BY GARY WARSHEFSKI**

26
27 I, Gary W. Warshefski, do declare as follows:
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1
2 I have personal knowledge of the matters set forth in this declaration.

3 1. I am the Deputy Superintendent for the United States Department of the Interior, National
4 Park Service (NPS) at Lake Mead National Recreation Area, (Lake Mead NRA or Park). I
5 have served in this position since June of 2001. I have worked for the NPS since 1976. Lake
6 Mead NRA includes 1.5 million acres of national park lands within the states of Nevada and
7 Arizona, including 300,000 surface acres of water and provides recreational experiences for
8 over 7 million park visitors annually. As the Deputy Superintendent, I provide park
9 operational leadership and management for over 300 employees and 1200 volunteers in a
10 wide range of functional areas including law enforcement, emergency medical services,
11 search and rescue, wildland and structural fire, communication and dispatch services, visitor
12 services and education, fee management, cultural and resources management, commercial
13 services, maintenance and engineering, planning and project management, public affairs, and
14 business operations.
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19 2. As the Deputy Superintendent, I oversee the response of NPS staff at Lake Mead NRA to
20 unauthorized cattle grazing and impacts from such grazing within Lake Mead NRA. The
21 area of Lake Mead NRA currently affected by trespass and stray cattle includes the west side
22 of the Overton Arm of Lake Mead from Echo Bay north to the northern boundary of Lake
23 Mead NRA and along the east side of the Overton Arm of Lake Mead to the Arizona state
24 line, which is referred to as the Overton Arm/Gold Butte Area (Overton Arm/Gold Butte
25 Area). The Overton Arm/Gold Butte Area corresponds to the area marked as "New Trespass
26 Lands" and "Former Bunkerville Allotment" within Lake Mead NRA shown on the map
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1 attached to this declaration as Attachment A. All of the federal land within the New Trespass
2 Lands and the Former Bunkerville Allotment within Lake Mead NRA is administered by the
3 NPS pursuant to the statutes and regulations applicable to all units of the National Park
4 System. Attachment B to this declaration is a more detailed map of the Overton Arm/Gold
5 Butte Area within Lake Mead NRA showing the New Trespass Lands, the Former
6 Bunkerville Allotment, and significant landmarks within the Park, including Park roads,
7 beaches, and areas within Lake Mead.
8

9
10 3. As part of my responsibilities, I routinely review reports, memos, and oral briefings by the
11 Lake Mead NRA staff on the presence and impacts from trespass and stray cattle on
12 resources, visitors and staff, and park operations. As the Deputy Superintendent at Lake
13 Mead NRA, I have dealt with and been responsible for NPS's responses to trespass and stray
14 cattle within the Overton Arm/Gold Butte Area because cattle are not authorized to be within
15 that part of the Park, cattle have damaged park resources, cattle have presented a danger to
16 visitors and NPS staff at Lake Mead NRA, and the response by the NPS to the presence of
17 cattle has adversely affected Park operations and required the use of NPS resources that
18 could have been used to provide outdoor recreation opportunities to the public.
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22 4. I first became aware of the presence and impacts of cattle in the Overton Arm/Gold Butte
23 Area upon my arrival to Lake Mead NRA in June of 2001. I was briefed that trespass and
24 stray cattle were within the Overton Arm/Gold Butte Area and were known to damage
25 resources. I have personally observed trespass and stray cattle in the Overton Arm/Gold
26 Butte Area. For the purposes of this declaration, I have reviewed Lake Mead NRA files and
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1 records and have reviewed the Declarations by Alice Newton (dated December 18, 2012;
2 Newton Declaration) and Mary Hinson (dated December 5, 2012; Hinson Declaration), both
3 Lake Mead NRA staff, and the Declarations by Mary Jo Rugwell (dated December 17, 2012;
4 Rugwell Declaration) and Lauren Brown (dated December 17, 2012: Brown Declaration),
5 both of the United States Department of the Interior, Bureau of Land Management (BLM).
6
7

- 8 5. The statute creating Lake Mead NRA, 16 U.S.C. §460n-3, allows for grazing within the
9 Park, subject to such limitations, conditions, or regulations that the Secretary of the Interior
10 may prescribe, and to the extent that it is not inconsistent with the recreational use or other
11 primary uses of the Park. Prior to approximately 1998, grazing on federal lands within Lake
12 Mead NRA was managed under a cooperative agreement between the NPS and the BLM.
13 Pursuant to that agreement, all authorized grazing within the Overton Arm/Gold Butte Area
14 was conducted under grazing permits issued by the BLM on behalf of the NPS for designated
15 administrative areas referred to as "allotments." The allotments administered by BLM
16 included public lands (BLM administered federal land) and federal land within Lake Mead
17 NRA administered by the NPS. Subsequent to the listing of the desert tortoise as a
18 threatened species under the federal Endangered Species Act, BLM closed the public lands in
19 the allotments surrounding Lake Mead NRA and the federal lands within the Overton
20 Arm/Gold Butte Area to grazing and non-federal parties purchased and retired all of the
21 grazing privileges within those allotments. (Rugwell Declaration ¶¶ 3, 10, and 11.) Since
22 1998, the NPS has not separately authorized any grazing within the Overton Arm/Gold Butte
23 Area of Lake Mead. Currently, there is no authorized grazing within the Nevada portion of
24 Lake Mead NRA, including within the Overton Arm/Gold Butte Area.
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2 6. Prior to 1994, Cliven Bundy had a permit to graze cattle within the allotment known as the
3 Bunkerville Allotment (shown as the Former Bunkerville Allotment on the maps attached as
4 Attachments A and B). Mr. Bundy's authorization to graze within the Bunkerville
5 Allotment, including that portion of the Former Bunkerville Allotment within Lake Mead
6 NRA, was terminated because Mr. Bundy failed to apply for the required permit and pay the
7 required fees. Mr. Bundy continued to have cattle within the Former Bunkerville Allotment
8 and in 1998 was found to be in trespass on federal lands in previous litigation involving Mr.
9 Bundy and the United States (United States v. Cliven Bundy, Case No. CV-S-98-531-JBR
10 (RJJ)). The District Court issued a Permanent Injunction against Mr. Bundy from grazing
11 cattle on federal lands within the Former Bunkerville Allotment.
12
13

14
15 7. I have reviewed the records for Lake Mead NRA and found that at no time has Cliven Bundy
16 requested or received permission or authorization to graze or have cattle or to erect
17 improvements on or within the New Trespass Lands, except for temporary structures used by
18 Mr. Bundy to gather and remove his trespassing cattle. The last time that Lake Mead NRA
19 staff granted Mr. Bundy permission to have temporary structures to hold his trespassing
20 cattle while he removed them from Lake Mead NRA was during the summer of 2011.
21 (Newton Declaration ¶20); that temporary authorization is no longer in effect. Currently, Mr.
22 Bundy has no authorization to graze or have cattle or improvements within the Overton
23 Arm/Gold Butte Area or any other area of Lake Mead NRA.
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- 1 8. Subsequent to the 1998 Injunction against Mr. Bundy until the present time, NPS staff,
2 contractors, and researchers, BLM staff, and visitors to Lake Mead have regularly observed
3 trespass and stray cattle within the Overton Arm/Gold Butte Area. Because of extended
4 drought, the level of Lake Mead has lowered substantially over the past decade from the most
5 recent high level in January 2000 to its lowest level in November 2010 as shown on
6 Attachment B. As the lake level lowered, trespass and stray cattle have migrated from the
7 Former Bunkerville Allotment and other areas outside the Park and spread south into the
8 former lake bed along the Virgin and Muddy Rivers, along the east side of the Overton Arm
9 of Lake Mead, and into the west side of the Overton Arm, areas of Lake Mead NRA that had
10 never been authorized for any grazing. Cliven Bundy is the only person to claim to have
11 cattle or whose cattle have been identified by brands and/or earmarks within the Overton
12 Arm/Gold Butte Area, including both the Former Bunkerville Allotment and the New
13 Trespass Lands. When cattle with Mr. Bundy's brands or earmarks have been observed,
14 those cattle have been intermixed with cattle that have no identifiable brands or earmarks.
15 To the best of my knowledge, Mr. Bundy is the only person to have cattle within the Overton
16 Arm/Gold Butte Area, and therefore, all of the cattle observed by NPS and BLM staff within
17 the New Trespass Lands and the Former Bunkerville Allotment within Lake Mead NRA,
18 whether or not branded or earmarked, are Mr. Bundy's cattle.
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23 9. NPS and BLM staff have documented trespass and stray cattle within the Overton Arm/Gold
24 Butte Area of Lake Mead NRA. I have reviewed and am familiar with the NPS records of
25 lands owned by the federal government that are administered by the NPS within the Overton
26 Arm/Gold Butte Area (NPS Lands) and state as follows:
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- a. The cattle discussed in paragraphs 5, 6, 7, 8, and 11 of the Hinson Declaration, in particular the cattle documented with brands and/or earmarks assigned to Cliven Bundy, were all located on NPS Lands.
- b. The cattle discussed in paragraphs 14, 17, 18, 21, 23, 25, and 26 of the Newton Declaration, and as depicted on the maps on Attachments E, I, J, K, and M of the Newton Declaration, in particular the cattle documented with brands and/or earmarks assigned to Cliven Bundy, were all located on NPS Lands.
- c. The cattle depicted as within Lake Mead NRA on the maps attached to the Brown Declaration as Attachments A, B, C, and E were all located on NPS Lands.

10. Trespass and stray cattle have damaged or destroyed natural and cultural resources within Lake Mead NRA (Newton Declaration ¶¶ 12, 13, 15, 16, 22, and 24). In addition, trespass and stray cattle present a serious threat to public safety by roaming on public roads, causing traffic accidents, and threatening people in the Park (Hinson Declaration ¶¶ 6, 7, and 8). In the past, parts of the Park were closed because of attacks of trespass or stray cattle on people in the Park. Because responding to trespass and stray cattle requires the NPS to re-direct staff and resources from other needed functions in the Park, the cattle have a significant adverse affect on Park operations. Because Cliven Bundy is the only person to have cattle within Lake Mead, I believe that damage to natural and cultural resources, the threats to public safety, and the affect on Park operations can be attributed to Mr. Bundy's cattle.

1 11. Lake Mead NRA staff have had interaction with Cliven Bundy or people who work for or
2 with Mr. Bundy including as described in the Declarations by Alice Newton and Mary
3 Hinson (Newton Declaration ¶20; Hinson Declaration ¶¶ 4, 5, 11, and 12). In addition, I
4 corresponded on behalf of the NPS with Mr. Bundy regarding his trespass cattle as follows:
5

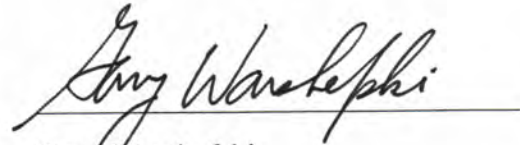
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- 7 a. On November 10, 2011, I sent a letter to Mr. Bundy stating that his cattle were
8 trespassing on federal land within Lake Mead NRA and that the trespassing cattle
9 were damaging natural and cultural resources and threatening public health and
10 safety. I also informed Mr. Bundy that his cattle would be subject to impoundment if
11 he did not remove them from Lake Mead NRA. A true and correct copy of the letter
12 that I sent to Mr. Bundy is attached to this declaration as Attachment C.
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- 14
- 15 b. By letter dated January 4, 2012, Mr. Bundy sent a response to my letter indicating
16 that he was aware that his livestock were in Lake Mead NRA and stating that he had
17 removed 165 head of cattle from the west side of Lake Mead and 36 head of cattle
18 from the Gold Butte area. He also acknowledged that he could have more cattle on
19 the west side around Overton Beach area and the he would “put effort into removing
20 those cattle.” A true and correct copy of the letter that the NPS received from Mr.
21 Bundy is attached to this declaration as Attachment D.
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- 23
- 24 c. On March 5, 2012, I responded to Mr. Bundy’s letter by another letter that informed
25 Mr. Bundy that he still had trespassing cattle within Lake Mead NRA and that he
26 should remove all his cattle immediately. Again, I informed Mr. Bundy that his
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1 trespassing cattle were subject to impoundment by the NPS. A true and correct copy
2 of the March 5, 2012 letter is attached to this declaration as Attachment E.

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4 12. Unless removed, trespass and stray cattle within Lake Mead NRA will continue to cause
5 damage to natural and cultural resources within the Park, will continue to present a risk to
6 the health and safety of visitors and NPS staff, and will continue to require staff time and
7 resources that could otherwise be used to provide the recreational opportunities that
8 Congress envisioned when it created Lake Mead NRA.
9

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11 Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United
12 States that the foregoing is true and correct to the best of my knowledge.

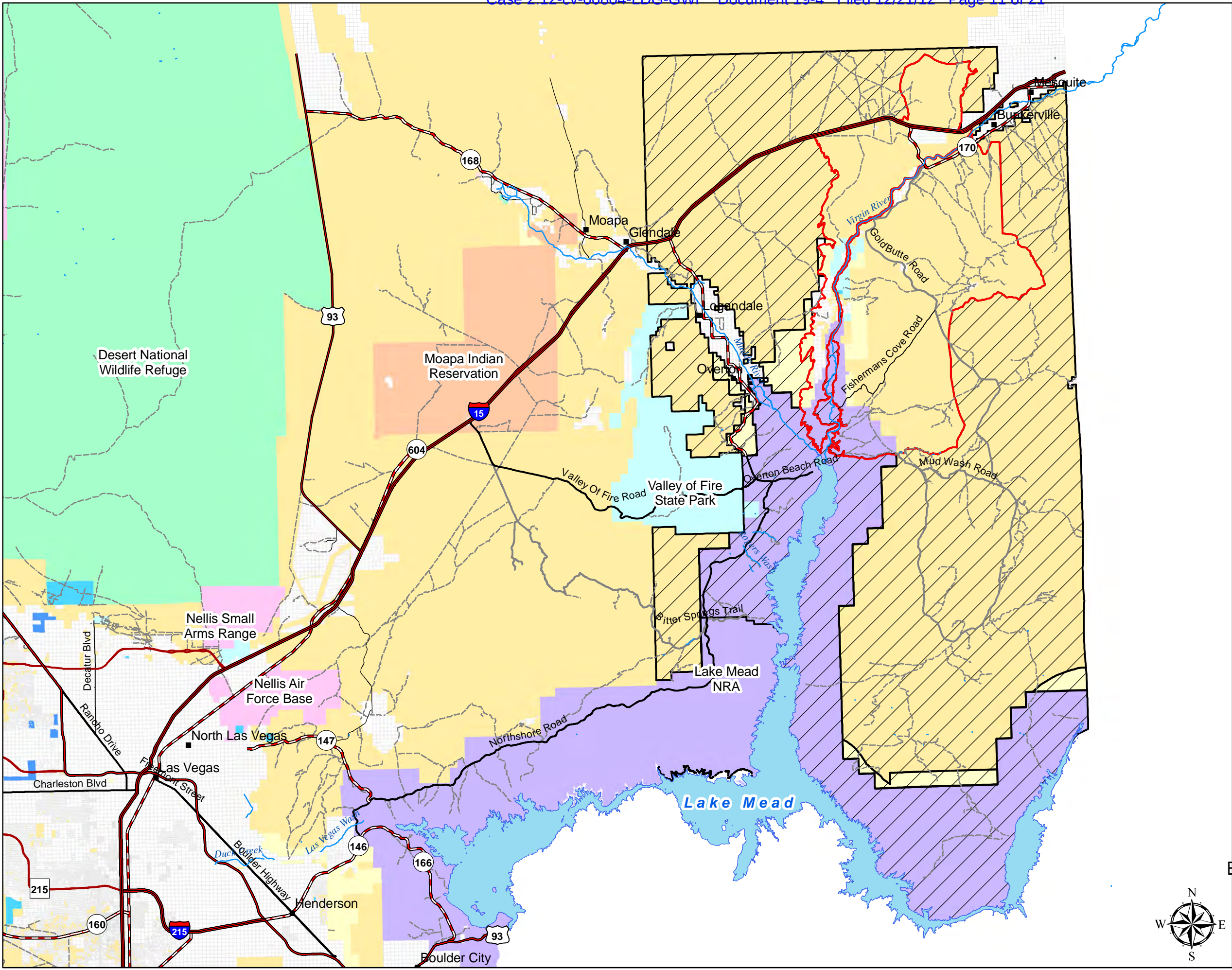
13 Signed this 20th day of Dec., 2012 at Boulder City, Nevada.

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18 Gary Warshefski
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ATTACHMENT A TO DECLARATION BY GARY WARSHEFSKI

United States v. Bundy, No. 2:12-cv-804-LDG-GWF

Bundy Cattle Trespass Overview



Legend

Former Bunkerville Grazing Allotment	Land Status
New Trespass Land	Bureau of Indian Affairs
City Location	Bureau of Land Management
NHD Hydrology	Bureau of Reclamation
Major Road	City of Las Vegas
Interstate	Clark County, NV
US Highway	Department of Defense
State Highway	Department of Energy
County Highway	Fish and Wildlife Service
Arterial	Forest Service
Collector	National Park Service
Local	Nevada State
Back Country Byway	Private
Resource	Lake Mead
Restricted	

Prepared for
United States of America
v. Bundy
No. 12-cv-804
Not intended for any other use



ATTACHMENT B TO DECLARATION BY GARY WARSHEFSKI

United States v. Bundy, No. 2:12-cv-804-LDG-GWF



**Attachment B
Gary Warshefski
Declaration**

**Prepared by the United
States for United States
vs.
Bundy
No. 12-cv-804**

***Not intended for
any other use***

Note: Lake level data based on U.S. Bureau of Reclamation sonar and LIDAR data. Full pool for Lake Mead is 1221' elevation. Most recent high water is 1214' in Jan 2000. Most recent low water is 1082' in Nov 2010.

Legend

- New Trespass Land
- Former Bunkerville Grazing Allotment
- Lake Mead NRA Boundary
- State Boundary
- Lake Mead - 1090' elev
- Lake Mead - 1220' elev

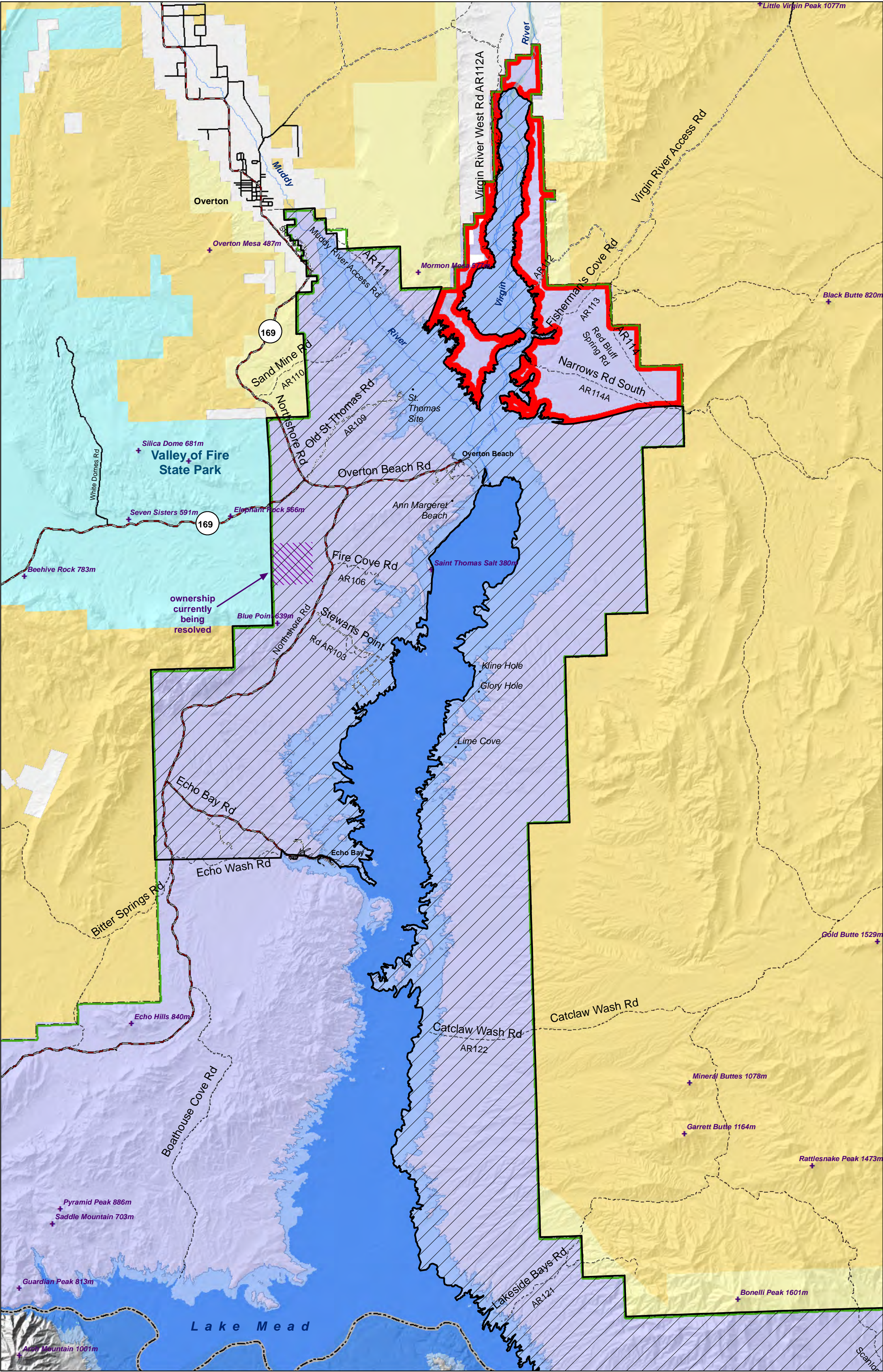
Roads

- US route
- Secondary highway
- Major road
- Local road
- Maintained unpaved road
- 4WD road

Ownership

Based on BLM land status data from 2012.

- Bureau of Land Management
- Bureau of Reclamation
- National Park Service
- Nevada State
- Non-federal Lands



ATTACHMENT C TO DECLARATION BY GARY WARSHEFSKI

United States v. Bundy, No. 2:12-cv-804-LDG-GWF



United States Department of the Interior

NATIONAL PARK SERVICE
Lake Mead National Recreation Area
601 Nevada Way
Boulder City, NV 89005



IN REPLY REFER TO:

W3415 (8361)

November 10, 2011

Mr. Cliven D. Bundy
P.O. Box 7175
Bunkerville, NV 89007

Re: Trespassing Cattle in Lake Mead National Recreation Area (Lake Mead NRA)

Dear Mr. Bundy:

I am writing you to inform you that your cattle are trespassing on federal land within Lake Mead NRA. Recent surveys have indicated that there are over 200 grazing head of cattle throughout the Overton Arm area of Lake Mead NRA. Approximately 40% of these cattle have earmarks and/or brands registered to you indicating your ownership of these cattle.

Livestock are not allowed within Lake Mead NRA unless in conformance with 36 CFR 2.60. 36 CFR 2.60(a) and (b) prohibit the running-at-large, herding, driving across, allowing on, pasturing or grazing of livestock of any kind in a park area is prohibited except under certain conditions and pursuant to the terms and conditions of a license, permit or lease. Currently, there is not authorization for any livestock, including yours, to be in this area of Lake Mead NRA. Your last authorization to graze cattle within Lake Mead NRA, on the small part of the larger Bunkerville Allotment (which was located on federal public lands) managed by the Bureau of Land Management (BLM), terminated in January, 1993. In addition, since 1998, you have been permanently prohibited (by a federal court order) from running cattle in the former Bunkerville allotment area. Since then, the number of your trespassing cattle within the Lake Mead NRA has grown, and migrated down the Overton Arm area of the Lake Mead NRA, almost 20 miles inside the Park. BLM has recently made you aware of your cattle trespassing within the Bunkerville allotment and other public lands, but you have failed to take any action to remove the cattle.

By this letter, I am notifying you that your cattle are trespassing on federal land within Lake Mead NRA. Because you have no authorization to have cattle within Lake Mead NRA, you are subject to the penalties set forth in 36 CFR 1.3 for this ongoing trespass.

Your trespassing cattle are damaging natural and cultural resources in Lake Mead NRA, resources that Congress has mandated that the National Park Service protect. The trespassing cattle threaten public safety due to interaction with visitors and their presence on public roads within Lake Mead NRA. The cattle also pose a public health risk because of the large amount of manure that is now in the park, including areas that have been covered, and may be covered again, by the waters of Lake Mead. We cannot allow this situation to continue.

Pursuant to 36 CFR 2.60, I am requesting that you remove all of your cattle that are within Lake Mead NRA within 60 days of the date of this letter. In the event that you fail to remove all of your cattle that are within Lake Mead NRA, the National Park Service may impound your cattle and dispose of the cattle in accordance with 36 CFR 2.60(c). After impoundment, you may redeem your cattle by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding and the amount of damage to public property injured or destroyed as a result of the trespass. In addition, the National Park Service may take additional legal action to address your ongoing trespass.

We will make every effort to work with you to remove your trespassing cattle. However, it is your responsibility. We will require that you communicate and coordinate with us your plans to comply with this request to limit further resource damage and visitor safety and health issues through the removal of your trespassing cattle. Your point of contact for coordination and approval of removal plan upon receipt of this letter is Chief Ranger Adam Kelsey, who can be reached at (702) 293-8964. If you have any questions, feel free to contact Deputy Superintendent Gary Warshefski at (702) 293-8920.

Sincerely,

Wm. K. Dickinson
for William K. Dickinson
Superintendent

Cc: Gregory Lind, Assistant Field Solicitor, DOI
Russ Marsh, Chief, Criminal Division, DOJ
Blaine T. Welsh, Chief, Civil Division, DOJ
Paul Crawford, Special Agent, NPS
Adam Kelsey, Chief Park Ranger, LAKE

[illegible]

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ATTACHMENT D TO DECLARATION BY GARY WARSHEFSKI

United States v. Bundy, No. 2:12-cv-804-LDG-GWF

CLIVEN D. BUNDY
P.O. Box 7175
Bunkerville, NV 89007
702-346-5564

Dept. of Interior
National Park Service
Lake Mead NRA
601 Nevada Way
Boulder City, NV 89005

January 4, 2012

RE: W3415 (8361) In reply to trespassing cattle in Lake Mead NRA dated 11-10-2011

Dear William K. Dickinson, Superintendent,

Cattle have migrated from my ranch across to the west side of Lake Mead because of three factors: 1. The elevation of Lake Mead, 2. Maintenance of fences on the Overton Wildlife Management Area, and 3. Maintenance of drift fences between my ranch and Gold Butte area. Lake Mead elevation is rising and Overton Wildlife Management Area has installed new fences. These two factors should reduce the cattle migration to the west side of Lake Mead.

Before the date of your letter Nov. 10, 2011, I removed 165 head of cattle from the west side of Lake Mead and 36 head of cattle from Gold Butte area. To my knowledge I could have as many as 20 head on the west side around the Overton Beach area. I will put effort into removing those cattle.

I want to thank you and the Park Service for being so cooperative and being a good neighbor.

Sincerely,


Cliven D. Bundy

Enclosed cc for:

Chief Ranger Adam Kelsey
Deputy Superintendent Gary Warshefski

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ATTACHMENT E TO DECLARATION BY GARY WARSHEFSKI

United States v. Bundy, No. 2:12-cv-804-LDG-GWF

United States Department of the Interior



NATIONAL PARK SERVICE

LAKE MEAD NATIONAL RECREATION AREA
601 NEVADA WAY
BOULDER CITY, NEVADA 89005

IN REPLY REFER TO:

W3415 (8361)

March 5, 2012

Mr. Cliven D. Bundy
P.O. Box 7175
Bunkerville, NV 89007

Re: Trespassing Cattle in Lake Mead National Recreation Area (Lake Mead NRA)

Dear Mr. Bundy:

Thank you for your letter of January 4, 2012 detailing the removal of trespassing cattle from the Overton Arm area of Lake Mead NRA. Recent surveys have indicated that there still remain at least 40 trespassing cattle in that area of the park, some with ear marks and/or brands registered to you indicating your ownership of these cattle.

As we discussed in our letter to you of November 10, 2011, livestock are not allowed within Lake Mead NRA unless in conformance with 36 CFR 2.60. Currently, there is not authorization for any livestock, including yours, to be in this area of Lake Mead NRA. While we appreciate your efforts to remove the majority of the trespassing cattle, you still have a considerable number in trespass, and subject to the penalties set forth in 36 CFR 1.3 for this ongoing trespass.

Pursuant to 36 CFR 2.60, I am requesting that you remove all of your cattle that are within Lake Mead NRA immediately. In the event that you fail to remove all of your cattle that are within Lake Mead NRA, the National Park Service may impound your cattle and dispose of the cattle in accordance with 36 CFR 2.60(c). After impoundment, you may redeem your cattle by submitting proof of ownership and paying all expenses of the United States for capturing, advertising, pasturing, feeding, impounding and the amount of damage to public property injured or destroyed as a result of the trespass. In addition, the National Park Service may take additional legal action to address your ongoing trespass.

We will make every effort to work with you to remove your trespassing cattle. Please contact Deputy Chief Ranger Adam Kelsey at (702) 293-8964 to coordinate their removal. He has up-to-date information you may want as to the current location of the trespassing cattle. If you have any questions, feel free to contact Deputy Superintendent Gary Warshefski at (702) 293-8920.

Sincerely,


for William K. Dickinson
Superintendent

Cc: Gregory Lind, Assistant Field Solicitor
Russ Marsh, Chief, Criminal Division, DOJ
Blaine T. Welsh, Chief, Civil Division, DOJ
Paul Crawford, Special Agent, NPS
Adam Kelsey, Chief Park Ranger, LAKE